



WISCONSIN LEGISLATURE

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Testimony of Senator Jim Sullivan and Representative Sandy Pasch Regarding Senate Bill 524:

Proposal to amend state search warrant statute regarding electronic communications Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

February 18, 2010

We would like to thank the members of the committee for hearing testimony on Senate Bill 524, which would provide our state's investigators with the tools they need to conduct thorough investigations of crimes that occur via the internet.

The use of the internet has changed our lives. We can reconnect with long lost friends, and pay our bills with the click of a button. But as the role of this technology has expanded for businesses and personal use, so has the spread of Internet-based crime. These crimes range from bank fraud to child enticement.

Our statutes have not caught up to technology, however. Wis. Stat. §. 968.12 (4) relating to search warrants states: "A search warrant may authorize a search to be conducted anywhere in the state and may be executed pursuant to its terms anywhere in the state." In addition, former Milwaukee County Circuit Court Chief Judge Kitty Brennan issued a 2007 ruling that required Milwaukee County Circuit Court judges to adhere to the state statute, holding that they could not issue warrants for corporations that operate outside of the state of Wisconsin.

That means that law enforcement officers face roadblocks in investigations involving electronic communications due to restrictions that remain in outdated state statutes. If a crime is committed involving an electronic communication, such as an email or chat room log, and that communication is hosted by a corporation that is based outside of Wisconsin, investigators have a difficult time obtaining access to the evidence they need.

Right now, Wisconsin-based law enforcement agencies have to rely upon law enforcement agencies in other states to execute a search warrant or subpoenas for companies based outside of Wisconsin to obtain these communications related to their investigations. Due to the nature of Internet-based crimes, timing is a critical factor in many of these investigations, and waiting for another law enforcement agency can be quite cumbersome and detrimental to the process.

The Electronic Communication Privacy Act in Chapter 121, U.S. Code, Title 18, sections 2701 through 2711 authorizes state judges to issue search warrants to companies who operate in other states regarding electronic communications. Many states—such as Minnesota, Massachusetts and Florida—have already adopted laws reflecting this Act.

This bill would allow a circuit court judge, upon a request from a district attorney or attorney general who has demonstrated probable cause, to issue a search warrant for an out-state corporation that provides electronic communication services or remote computing services.

These out-state companies would then be required to produce the contents of the communication that is in electronic storage or maintained by a remote computing service.

This bill will help law enforcement in their efforts to handle their investigations quickly and efficiently, and aid them in assisting children and the elderly, who are often the most susceptible to internet-based crime.

This bill is supported by the City of Milwaukee, the Wisconsin Department of Justice, and the Wisconsin District Attorneys Association (WDAA).